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ABSTRACT

Reality and the law are forcing us to reexamine the social concepts of privacy as linked to individual rights, and disclosure as an institutional duty. The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment) establishes the right of parents to have access to their children's school records and to challenge the accuracy and relevance of these records; it also limits the disclosure of personally identifiable information. These rights are also extended to students who are over 18 or attending a postsecondary institution. The Act raises uncertainties regarding freedom of access to student records, particularly test scores, by research organizations; furthermore, it is unclear how schools and administrators will comply and how strictly the federal government will enforce requirements by denying funds to schools that do not comply. Influenced by the consumerism movement, federal regulations are beginning to reflect a demand for access to institutional records as well as publication of the institutional policies that may affect students and parents. Since blacks and the poor tend to have less education, poorer jobs, and lower income, action to improve their status should include efforts to increase their consumer awareness. There are two approaches to this problem of consumer awareness: to educate the consumer in every day living skills, and to force the market place to provide more information than it now volunteers. Neither is a substitute for the others. Schools should take an affirmative role in the provision of information by designing and implementing consumer education programs which use a variety of media to reach different audiences. (CP)

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WHAT SHOULD THE PUBLIC

A. BE TOLD
B. HEAR
C. KNOW

ABOUT ITS SCHOOLS?

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Four topics covered in this presentation are: I. Historical Background of the "Right to Know" & "Right to Privacy," II. The Buckley Amendment and related regulations, III. Student Records -- Access and Release, and IV. Education Consumerism: an affirmative role for schools.

I. Historical Background of the "Right to Know" & "Right to Privacy"

Very early in American history, the family home was considered to be a special haven of privacy, at least against governmental intrusion. After the Revolution, the Bill of Rights contained prohibitions against government interference with home life that has since been interpreted to co vey certain privacy rights to citizens.

In 1853 Frances Lieber contended that the First Amendment was meant to ensure "freedom of communication," including the "liberty of silence."

The Third Amendment prohibited the quartering of soldiers in private homes.

The Fourth Amendment guaranteed "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures."

The Fifth Amendment's protection from self-incrimination put a limit on public pryings. However, privacy issues have only come to the forefront as a major concern in the twentieth century following the rapid expansion of population and the increased urbanization and industrialization of our society. Earlier settlers were more concerned with property rights than with the privacy of person. The American sociopolitical tenets of an egalitarian society, plus the moral strictness of our Puritan Heritage demanded censorious watching over the private lives of community members. Even today our approach to social welfare reflects that heritage. We violate the privacy of the poor in the name

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of the good being done them. (Westin, 1970)

Development of surveillance technology, increased use of individual testing, the records keeping function of social institutions, numerous forms or organizational intelligence, and massive computers with interconnections among data bases have allowed abuses of individual privacy rights to which the law has recently responded with powerful statues to correct and protect against invasions of individual records. (Taylor and Tackney, 1977)

The very form and the nature of the data and information that is gathered for administrative and research projects arouses public concern that such data in the wrong hands, or in the right hands for the wrong reasons, might lead to behavior control and use of social indicators that could make 1984 a reality --- there are those who say it is a reality!

Our historical social thought patterns tend to see the concept of "privacy" as linked to individual rights and the concept of "disclosure" as an institutional duty. We are not attuned to consideration of an institution's right to privacy nor of an individual's duty to disclosure. Reality and the law are forcing us to reexamine the validity of these concepts and to attempt to achieve a balance between the "Right to Know" and the "Right of Privacy" of <u>both</u> institutions and individuals, particularly when institutional disclosure infringes upon individual rights.

II. <u>The Buckley Amendment and related regulations</u>

The Family Education Rights and Privacy Act was introduced by former Senator Buckley (Ind., N.Y.) on the floor of the Senate as an amendment to the 1974 General Education Provisions Act. It became effective on November 19, 1974 and was amended when serious problems became apparent. The final regualtions were completed by HEW and published on June 17, 1976 in the Federal Register.

Buckley credited an article in Parade with being the actual catalyst for his amendment. When it was called to his attention, he had his staff to contact the two institutions it mentioned, the Russel Sage Foundation and the National Committee for Citizens in Education. (Both of these groups had addressed the problems of privacy

and record keeping as early as the late 60's)

Upon investigation Buckley discovered that many people were concerned with what records our schools and colleges were keeping and what they were doing with them. Initially the language of the amendment covered only primary and secondary schools. Before the measure came to the floor, the reference to higher education was included.

Briefly, the Buckley Amendment to the General Education Provision Act applied to all schools which receive federal aid in any form or amount:

-- established the right of parents to have access to their children's school records

-- to challenge the accuracy and relevance of information in those records; and,

-- limited the disclosure of personally identifiable information from school records without parental consent.

"A student who is 18 years of age or attending a postsecondary institution may exercise these rights on his or her own behalf." (HEW - P.R.)

Parents have an opportunity for a hearing to challenge the content of a record, to insure that they are not inaccurate, misleading, or otherwise in violation of privacy or other rights of students. Some provisions are included for institutional flexibility in releasing records upon compliance with certain criteria.

Parents and older students can "inspect and review" at will the "Official records, files and data, including all material that is incorporated into each student's cumulative record folder and intended for school use or to be available to parties outside the school..."

These records include "identifying data; academic work completed; level of achievement (grades, standardized achievement test scores); attendance data; scores on standardized intelligence, aptitude and pscychological tests; interest inventory results; health data; family background information; teacher or counselor ratings and observations

and verified reports of serious behavior patterns."

The act also puts a near-absolute clamp on distribution of student records without written consent from a parent or older student. Even subpoenaed records cannot be released without notification to the parent or student.

Under the act, administrators have no choices in the following situations -- unless they want to lose their federal funds:

--The mother of an eight-year-old child wants to see her child's aptitude and intelligence test scores. The school must provide them.

--An 18-year-old senior in high school wants to see his entire cumulative record file. The school must provide it.

--A Federal Bureau of Investigation agent requests the student file of a 17-year-old high school student. The school must not provide it without the written consent of the parent. If the student were 18, the school would need the student's consent.

--A 17-year-old college student wants to see the results of all the tests in the student's file. The college must provide them.

Less clear in how school and college administrators will respond, what procedures and policies must be developed for compliance, under what specific circumstances federal funds can be denied, and how strictly federal officials will enforce the requirements. (Chase, 1975)

William Rioux, senior associate for the National Committee for Citizens in Education a major proponent of the act, said: "In the old protected atmosphere some of the language (in student records) got pretty loose and pretty far reaching. If the rationale for the existence of school records is to plan for the interests of the student, then it is innately unfair that other groups can see his records but he can't. The Buckley Amendment marks the end of a time when we have to protect a person from information about himself."
(Chase, 1975)

III. Student Records -- Access and Release

Several of the problems inherent in the Family Educational Rights and Privacy Act were apparent to some school administrators even before the law became effective on November 19, 1974. Amendments that corrected many of the problems in the original law were drawn up, passed, and signed into law on December 31, 1974 (ERS, Inc.)

One of the amendments permitted access for organizations conducting studies "for, or on behalf of educational agencies or institutions for the purpose of developing, validating, or administering predictive tests .. and improving instruction."

Research organizations qualifying under this exception must conduct their studies in such a manner as will not permit the personal identification of students and their parents by other than representatives of such organizations. The purposes of their studies must be made known, and the data obtained must be destroyed "when no longer needed for the purposes for which the study is conducted." (Davis, 1975)

Some questions have been raised about educational research already in progress and the problem researchers may have in going back to school to take the necessary steps required by law. Subject to further interpretation is the provision of the law pertaining to research done to "improve instruction" which may not apply to the great majority of educational research activities -- that provision was added following pressure from testing organizations. The meaning of "improving instruction" requires further definition. It appears that data can be stored in computer facilities as long as only the original researcher has access to it. According to the law, if any other parties have access to the data additional written consent must be obtained.

The law permits the destruction of existing records, unless parents or students have requested to examine them. Many researchers feel that valuable information has been -- and will be destroyed in anticipation that there might be charges concerning their content. In addition, it can be anticipated that the amount and kinds of data maintained by schools will be effected.

"The gist of the privacy issue for psychological and educational testing may be that federal legislation and court decisions now remove many conventional practices from the deomain of assumed autonomy. The extent to which test uses and practices will be altered is unclear but nonetheless affected by concepts of public policy that have been labeled "fair information practices." ... "Where test scores become an explicit part of official records, the implications are more obvious. Standardized tests given for academic placement, course exemption, academic credit, or to satisfy other degree requirements must necessarily become a part of the student's official record and acquire the same status, apparently, as course grades and other entries..."

"Where test data are a part of survey research of institutional studies, their propriety, confidentially, and due process would appear to be even more explicit. Such data are not only subject to the canons of research but also to the guidelines, standards, and principles that govern the conduct of research with human participants. Full and proper attention must be given to the individual's right to participate or not to participate in the collection of such data. The anonymity of individual scores in analysis and interpretation must be protected and the confidentiality of all research findings that might encroach on the individual's rights should be assured." (Fincher, 1977)

Of significance to Boards of Education will be the mushrooming effect of public and private usage of legal tactics to gain other information that might be regarded as confidential. A recent case in point was an attempt to force disclosure of an administrator evaluation of performance.

The Board of Education notified a superintendent prior to the expiration of his contract of its decision not to re-hire him. Within the notice was an unsolicited evaluation of the superintendent's performance. Because of the confidential nature of the statement, the Board did not include a copy within the employee's personal file.

A representative of a newspaper asked for a copy of the letter. Both the Board and the Superintendent refused to provide the copy. The newspaper sued claiming a right of access because of the state's "right to know" law pertaining to public records. The

trial court held for the newspaper -- but was reversed by the appellate court.

In its examination of the "right to know" law the court noted that the statue mandates that all "public records" should be open to inspection. In further defined "public records" as those "required by law." Since the evaluation report was not required by law, it was not considered a public record and was therefore not open to inspection. (Delon, 1977)

An atmosphere of mutual trust is essential to a productive educational environment. When parents and students provide schools with personal information or when personal information is collected by the schools, a relationship of confidentiality is established between the parents, students, and the institution. To maintain a healthy relationship, the institution needs to actively demonstrate commitment to that relationship -- to an implicit agreement to foster a climate of intellectual experimentation and candid interaction necessary to the growth of the student while protecting the right to privacy. If the institution perceives of its commitment to maintain data security, prevention measurers become the key to acting rather than reacting, to initiating rather than resisting, the formulation of policies and procedures that safeguard the rights of students and staff. (Virunurum and Gaunt, 1977)

IV. Educational Consumerism: an affirmative role for schools.

In June of 1976 in response to the American School Board's Journal "Ballot Box" questions: How much of a problem has the Buckley Amendment been for your schools?

57% of respondents said their schools had not received more than a few requests for records. Among explanations offered for the lack of demand for viewing administrative records were: "Confidence in the administrators and schools," and "..not denying parents and students access in the past (consequently) no rush," Prophetically and perhaps more realistically, one respondent offered a different explanation: "Parents are not well informed about the new legislation," he said. "I expect, with more exposure, that parents and secondary students will become more concerned with the contents of their records." (Journal Ballot Box, 1976)

The question of what and how much information should be provided to parents and student will in all probability continue to be defined by federal and state laws and regulations in a manner influenced by Ralph Nadar's legalistic approach to the the rights of the consumer. Most of us would agree that we would rather have local and state action address the rights and privacy of schools records than the courts.

Robert Dentler, dean of the Boston University's School of Education and a close aide of U. W. District Judge W. Arthur Garrity who placed the entire Boston School system under the court's jurisdiction, pointed to several cases recently brought against school systems by parent's objecting that their high-school graduates cannot read or write. "What can people do?", asks Dentler. "We're in a situation where on many fronts, courts are becoming the last resort for parents and their complaints." (City Schools, 1977)

Some of the more organized and militant parents and students are demanding not only access to institutional records but the publication and dissemination of institutional policies and practices that may affect them. Laws and federal regulations are beginning to reflect that demand. The final regulations to implement Student Information Requirements established by Title I of the Education Amendments of 1976 (Pub. L. 94-482) were published in December of 1977. The regulations established rules and procedures whereby institutions of post secondary education which receive administrative payments under Title IV will disseminate information to students concerning the academic programs of the institution and the financial assistance programs available to students for attendance at the institution. It can be anticipated that other requirements for educational consumer information will follow. (Federal Regulation, 1977)

If the educational voucher comes to elementary and secondary public education as it already has to higher education in the form of the Basic Educational Opportunity Grant, there will be an additional factor giving a "dollar appeal" to the marketing aspect of consumer education - competition for "customers." Federal grants, G. I. Bills, Millage votes and other dollars will probably follow students to the schools that

best serve them according to their determination. Many colleges and universities are already experiencing early warning tremors as declining college enrollments, and inflationary costs force them into competing for "customers" in the market place" of higher education. (Herder, 1977)

Particular attention may need to be focused upon the black consumer. A recent article in the NAACP application, "The Crisis", called for closer monitoring by parents and community groups germane to what is actually being taught in the schools and called for parents to demand the fiscal and monetary resources necessary to achieve excellence. It was suggested that budgets developed by local governing bodies should be carefully scrutinized to make sure that sufficient resources are provided for education.

Some of the startling facts used as rationale for monitoring schools are quoted by Samuel Etheridge of the NEA from a study/of what has happened to blacks in education since the Brown decision of 1954:

> "Over 6,000 black principals have been dismissed or demoted since 1954. Black teachers, with the exception of large urban school districts, find it extremely difficult to advance to higher level administrative and supervisory positions. Black children and youth make up a disproportionate number of the 2.2 million students who are suspended or expelled from the public schools according to a recent study of the Children's Defense Fund. While segregation in our nation's public schools is now legally dead, thanks to Brown and subsequent Federal court decisions, the practical implementation has not become a reality in this century." (Banks, 1977)

The fact that black children, teachers and administrators have paid a staggering price for the constitutional right of quality educational opportunity and that it passes almost unnoticed and unknown is an eloquent testimony for the need to monitor schools.

The black consumer is much more likely to be poor than are whites. The black consumer on an average will have less education, poorer jobs, and less income than whites. Even when the same income levels are compared, racial discrimination has an impact on blacks in consumer market sophistication and in dealing with formal bureaucratic relationships. Discrimination that restricts blacks to living in ghetto areas, also restricts the middle-class black and makes it difficult to escape predominately poor and black areas. The feeling of alienation, frustration, and powerlessness that extend

throughout the black income spectrum have a marked effect on effectiveness in combating fraud and deception.

Disadvantaged consumers are not all black, but they are usually poor. The major problem faced by the poor as might be expected is low income. Numerous studies have identified some of the characteristics associated with low income such as: instability of income, lower education, large families, lack of transportation, and the lack of information. Evidence indicated that in general, the undereducated know less about interest rates, where to go for legal assistance, they tend to gather less information before making major decisions, tend to be less knowledgeable. It is known that they have less formal education and that they less often have white-collar jobs that can teach them how to cope with paper work. They more often have come from rural or foreign background which have limited applicability to urban markets, they read less, and they sometimes have serious language problems.

Because they have a lesser ability to absorb the costs of wrong decisions, one might argue that the "poor" consumer needs to know more than the "average" consumer. Even the complexities of the legal system may be used to deceive and to defraud the disadvantaged just as the complexities of the language may be used to misinform and mislead them.

If the disadvantaged have a greater "knowledge gap" than the nondisadvantaged, proposals of action to diminish their disadvantaged status ought to include efforts to reduce this gap. "Such efforts, if successful, could redress the balance of informational power and work toward the elimination of many of the policies and practices that tend to deny crucial information necessary for influencing the decision making process.

There are two basic approaches to the problem of the consumer knowledge gap: One starts at the consumer side of the transaction, the other at the market side. The first approach is to equip the consumer with more basic skills and knowledge in order to take more effective action or to seek out further information as needs arise. The alternative approach is to force the market place to provide more information than it volunteers now.

The two approaches, which can be labeled respectively, "Educating consumers" and "Increasing market information," are not substitutes for each other. (Andreasen, 1975)

Federal legislation, including the Family Rights and Privacy Act of 1974, has focused attention on the need for school districts and educational institutions to formulate written policies and procedures for access and release of records and other information and to advise their constituency of those policies and procedures. We should anticipate that parents and students will evidence a growing concern with methods of catagorizing students and procedures for challenging student records.

Educational institutions and school districts might consider the advantages in having an affirmative role in the design and implementation of consumer education programs. Informed parents and students are less likely to be myopic in viewing an issue and more inclined to perceive of the interrelatedness of budget to supplies, of educational costs to programs, of staffing to program implementation, of testing to educational research, etc.

One obvious place to begin is with teaching children who more than likely will be family members, participate in work and in leisure, pay taxes and consume. Integrating the learning of lifelong consumer skills into the curriculm can be an effective technique throughout all grade levels, including adult educational programs. (Alleman-Brooks, Fitzgerald, 1977)

Dissemination of special written consumer education materials via books, magazines, brochures, memoranda, or letters is a familiar technique and one often used by schools. Newspapers are another source of consumer information. More recently, consumer information in the form of comic books, as simple readers in both English and Spanish, as coloring books, and in large type for the elderly have evidenced successful communication.

Effective use of the media has been underutilized as an educational tool for communicating information to the disadvantaged. Some advantages of the use of radio and television include:

--Reach more than 95% of disadvantaged homes;
--The poor are much more likely to put in long hours watching television than the non poor and blacks more hours listening to radio than whites;
--Oral communication is easier for the undereducated to absorb
--Radio and television do not require coming to a specific place at a specific time, it can reach people where they are when done creatively and in shorter time spand. (Andreasen, 1975)

The development and utilization of significant guidelines to insure balanced controls over unwarrented disclosures that violate the right to privacy demonstrates institutional integrity and intent to maintain the public trust.

Why not broadcast it?

Hortense G. Canady
February 12, 1978

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